

***CERTIFIED FOR PUBLICATION***

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION THREE**

JOSE LUIS DURAN,

Petitioner,

v.

THE SUPERIOR COURT OF  
ORANGE COUNTY,

Respondent;

THE PEOPLE,

Real Party In Interest.

G020454

(Super. Ct. No. 94NF1525)

O P I N I O N

Original proceeding; petition for a writ of prohibition/mandate to challenge an order of the Superior Court of Orange County, William R. Froeberg, Judge. Writ granted.

Stephen J. Biskar, Associate Defender, and Constance Istratescu, Deputy Associate Defender, for Petitioner.

Michael R. Capizzi, District Attorney, and David S. Kirkpatrick, Deputy District Attorney, for Real Party in Interest.

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Following a verdict finding defendant Jose Luis Duran guilty of second degree murder, he petitioned the trial court for an order disclosing personal identifying information on the jurors who decided his case. The petition showed that, subsequent to the trial, a juror provided information critical of the deliberation process, including consideration of a newspaper article critical of the criminal justice system. The trial court denied the petition and defendant sought relief in this court. We issue this peremptory writ, ordering the court to schedule and conduct a hearing pursuant to Code of Civil Procedure section 237 (all further statutory references are to the Code of Civil Procedure unless otherwise indicated).

The petition seeking personal juror identifying information was supported by a declaration from defendant's trial attorney. The declaration discloses that, after the verdict was returned, Mr. Palmroth, one of the jurors, told counsel: "a) A juror initiated deliberations by saying, 'A man is dead and someone has to pay.' Several jurors apparently agreed with this remark and told Mr. Palmroth that he would have to convince them of Mr. Duran's innocence, thereby disregarding Mr. Duran's right to the presumption of innocence. [¶] b) One juror gave Mr. Palmroth, *sic* a newspaper article that discussed the Simpson and Menendez cases and severely criticized the criminal justice system and the conduct of criminal defense lawyers. The juror told [Palmroth] the article *sic* would help him decide [the case]. [¶] c) At least one juror impermissibly considered Mr. Duran's potential penalty."

The petition filed here asserts three additional instances of alleged jury misconduct. However, since these instances were not presented to the trial court, we will not consider them. We also note that the declaration supporting the petition in the trial court consisted solely of hearsay and thus might have been rejected on that ground. (*People v. Villagren* (1980) 106 Cal.App.3d 720, 729-730.) But there is no indication in the record that the People objected to the court considering the declaration's statements and the objection is therefore waived. (*People v. Anderson* (1974) 43

Cal.App.3d 94, 103.) Likewise, the failure to supply a copy of the allegedly offending newspaper article might have been a basis for an objection based on the best evidence rule. (Evid. Code, § 1500.) Here also, the failure of the district attorney to object constitutes a waiver. (*Sublett v. Henry's Turk and Taylor Lunch* (1942) 21 Cal.2d 273, 276.)

The court denied the petition as well as an application for reconsideration without setting a hearing pursuant to section 237, subdivision (b), upon a finding that the petition and a subsequent application for reconsideration failed to establish a showing of good cause for the release of the identifying information. We stayed the sentencing hearing and requested informal replies from respondent and the district attorney. Respondent furnished us with copies of the minute orders denying the petition and the application for reconsideration, which stated respondent's reasons for the denial. The district attorney furnished us with a letter brief.

In denying relief, respondent focused on whether the allegations of the petition for personal juror information, if true, would support a new trial. The district attorney's brief has a similar focus. However, the criteria by which the good cause for the petition is to be measured do not rise to this level.

Section 206, subdivision (f) declares, "Pursuant to Section 237, a defendant or defendant's counsel may, following the recording of a jury's verdict in a criminal proceeding, petition the court for access to personal juror information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose. This information may include jurors' names, addresses, and telephone numbers. The court shall consider all requests for juror identifying information pursuant to Section 237."

There is a conflict in the case law concerning what a criminal defendant must show to obtain personal juror information after the jury has returned its verdict. (Compare *People v. Simms* (1994) 24 Cal.App.4th 462, 466 [request showing

defendant wanted information to develop issues for some lawful purpose is sufficient] with *People v. Wilson* (1996) 43 Cal.App.4th 839, 852, *People v. Granish* (1996) 41 Cal.App.4th 1117, 1128-1129, and *People v. Rhodes* (1989) 212 Cal.App.3d 541, 551-552 [requiring a presentation of evidence establishing good cause for disclosing the information].) But even under the more restrictive standard, defendant is entitled to relief. Since a defendant is entitled to personal juror information “for the purpose of developing a motion for new trial,” it is not necessary for defendant to establish that, if the asserted facts are true, the alleged jury misconduct would entitle him to a new trial.

The good cause requirement is satisfied by evidence which would lead to the conclusion further investigation may disclose such misconduct as would entitle defendant to a new trial. A prima facie showing of potential misconduct is sufficient; issues such as prejudice from the alleged misconduct, which are relevant on a motion for new trial (see *People v. Holloway* (1990) 50 Cal.3d 1098, 1111, disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1), should not be considered on a petition to release juror identifying information under section 237; the potential for prejudice is sufficient. (*People v. Rhodes, supra*, 212 Cal.App.3d at pp. 551-552.)

The second charge of misconduct, the newspaper article criticizing the criminal justice system, carries such a potential for prejudice. Unfortunately, counsel did not deem it necessary to supply either respondent or this court with a copy of the allegedly offending article. However, there is no suggestion the article specifically referred to defendant’s trial. Respondent and the district attorney seem to support a black letter rule that jurors’ consideration of extraneous newspaper articles not pertaining to issues in the trial itself can never support a finding of jury misconduct. *People v. Mincey* (1992) 2 Cal.4th 408 illustrates that there is no such rule. In *Mincey*, a juror treated her fellow jurors to verses from the Bible relating to the death penalty. Although the court held there was no prejudice, it recognized there was misconduct

creating a presumption of such prejudice. (*People v. Mincey, supra*, 2 Cal.4th at p. 467.) So here, the use of the newspaper allegedly discussing and criticizing the criminal justice system and the conduct of criminal defense lawyers shows at least a potential for misconduct.

Section 237 was enacted in 1991 for the apparent purpose of protecting jurors' right to privacy. The hearing procedure provided in subdivision (c) permits jurors to indicate if they do not wish to be contacted and subdivision (d) authorizes the court to withhold identifying information for jurors who so indicate. The mere granting of the petition for disclosure, i.e., holding a hearing under subdivision (c), by itself, does not significantly impinge on jurors' privacy rights. In light of this, and in light of the "strong public interest in the ascertainment of the truth in judicial proceedings, including jury deliberations," (*People v. Atkins* (1988) 203 Cal.App.3d 15, 27, disapproved on other grounds in *People v. Jones* (1990) 51 Cal.3d 294, 322) the statute should be liberally construed. Based upon the showing made in defendant's petition, the court should conduct a hearing.

The petition and the district attorney's reply adequately address the issue, there is no factual dispute, and additional briefing is unnecessary. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.) There is also a compelling urgency because of potential fading memories -- an investigation of the alleged jury misconduct should be completed as soon as possible. (See *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) Moreover, the entitlement to relief is obvious. (*Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1223.) Let a peremptory writ issue directing the

superior court to vacate its order denying defendant's petition seeking personal juror information and conduct a hearing pursuant to section 237, subdivision (b).

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

CROSBY, J.